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November 4, 2014

Via Email r5foia@epa.gov

FOIA Officer

U.S. Environmental Protection Agency, Region 5 (MI-9J)

Ralph Metcalfe Federal Building

77 West Jackson Boulevard

Chicago, IL 60604

**FREEDOM OF INFORMATION ACT REQUEST**  
**AND REQUEST FOR FEE WAIVER**

Re: Request for information pertaining to EPA Inspections of Concentrated Animal Feeding Operations in South Central Michigan and Fee Waiver Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act (the “FOIA”), 5 U.S.C § 552 *et seq.* and EPA’s accompanying regulations 40 C.F.R. § 2.100 *et seq.* I am making this request on behalf of 501(c)(3) nonprofit organizations, Environmentally Concerned Citizens of South Central Michigan, and the Socially Responsible Agriculture Project. We hereby request that you provide copies of the following materials:

1. All records, data, studies, reports and communications— in any format<sup>1</sup> — generated or received by the Environmental Protection Agency (“EPA”) regarding EPA inspections of CAFOs in South Central Michigan<sup>2</sup> conducted from 2010-present. Specifically included within the scope of this request are any communications the EPA staff have had regarding CAFO inspections, enforcement activities, or investigations, or the results thereof with the Michigan State Department of Environmental Quality (“DEQ”), or any individual or entity acting on behalf of DEQ and the Michigan State Department of Agriculture and Rural Development (“MDARD”), or any individual or entity acting on behalf of MDARD on CAFOs in South Central Michigan.
2. All records data, studies, reports and communications — in any format — generated or received by the Environmental Protection Agency regarding any and all

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<sup>1</sup> This includes, but is not limited to, printed or written correspondence, drafts, books, papers, photographs, email or other machine readable electronic record, telephone messages, voice-mails or other sound recordings, notes of personal conferences, telephone conversations or personal meetings. It also includes electronic copies or backups if the originals have been destroyed. This definition of communications applies to all documents sought by this letter.

<sup>2</sup> The term “South Central Michigan” for purposes of this FOIA request includes the counties of Lenawee, Hillsdale, Branch, Calhoun, Jackson, and Washtenaw.

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inspections of CAFOs in South Central Michigan conducted by, or at the behest of, the EPA from January 1, 2010- present. Specifically included within the scope of this request is any data, studies, documents or information regarding EPA inspections, investigation, or enforcement activities of both NPDES-permitted and unpermitted CAFOs in South Central Michigan.

3. All records data, studies, reports and communications — in any format — generated or received by the Environmental Protection Agency regarding the impacts of CAFOs on groundwater, surface water, and wetlands, and estuaries in and around South Central Michigan and emptying into the Kalamazoo Watershed, St. Joseph Watershed, Pigeon Watershed, Elkhart Watershed, Grand Watershed, Huron Watershed, Raisin Watershed, Maumee Watershed, Raisin Watershed, Raisin Lake Drainage, the Tiffin Watershed into the Maumee River, and into Lake Erie.<sup>3</sup>

We request this information in light of the President's "Memorandum for the Heads of Executive Departments and Agencies" dated January 21, 2009, which states:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.... In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosures should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

Exec. Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4,683 (Jan. 21, 2009). This request is being sent to the EPA Region 5 FOIA Officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

We emphasize that this request applies to all described documents the disclosure of which is not expressly prohibited by law. If you should seek to prevent disclosure of any of the requested records or you or your office has destroyed records that could reasonably be construed to be responsive to this request, we request that you: (1) identify each such document with particularity (including title, subject, date, author, recipient, and parties

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<sup>3</sup> See enclosed maps of Michigan's Major Watersheds also available at <http://www.crowc.org/wp-content/uploads/Map-of-Michigan-Watersheds.pdf>, and North Eastern Ohio DNR Watershed Map also available at [http://coastal.ohiodnr.gov/Portals/coastal/pdfs/atlas/lake\\_erie/LEW3\\_MaumeeRiverWatershed\\_11by11\\_low.pdf](http://coastal.ohiodnr.gov/Portals/coastal/pdfs/atlas/lake_erie/LEW3_MaumeeRiverWatershed_11by11_low.pdf).

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copied); (2) explain in full the basis on which nondisclosure is sought; (3) provide us with any segregable portions of the records for which you do not claim a specific exemption, and (4) provide facts and reasons for the withholding determination.

### **FEE WAIVER REQUEST**

On behalf of Environmentally Concerned Citizens of South Central Michigan and the Socially Responsible Agriculture Project, I request that you waive all search, duplication, review, and clerical and other fees associated with providing information responsive to this request. The FOIA requires the federal government to furnish documents to public interest groups free of charge, or at a reduced rate, “if disclosure of the information is in the public interest.” 5 U.S.C. § 552(a)(4)(A)(iii). Such disclosure is in the public interest if “it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *Id.*; 40 C.F.R. § 2.107(l). FOIA carries a presumption of disclosure, and the fee waiver was designed specifically to allow nonprofit, public interest groups, such as Environmentally Concerned Citizens of South Central Michigan and the Socially Responsible Agriculture Project, access to government documents without the payment of fees. The courts have stated that the statute “is to be liberally construed in favor of waivers for noncommercial requesters.” *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (stating “that Congress amended FOIA to ensure that it is ‘liberally construed in favor of waivers for noncommercial requesters’”). As explained below, this request meets the two-pronged test for a fee waiver established in FOIA and the EPA’s accompanying regulations.

Environmentally Concerned Citizens of South Central Michigan (ECCSCM) is a 501(c)(3) non-profit based in Michigan. ECCSCM’s mission is to educate the public on the health risks and the environmental damage confined animal feeding operations bring to the community of south central Michigan, and the watersheds in the region. ECCSCM supports vanguard, responsible agriculture, farming that looks ahead to the next generations, preserves biodiversity, raises animals in a healthy environment, does no harm to its neighbors, enhances the natural assets of living communities, and protects the state’s national resources – air, soils, groundwater, streams and lakes. ECCSCM works through public outreach and education, collaboration, and policy advocacy to raise awareness of CAFOs and seek solutions to the myriad of public health and environmental problems they cause.

ECCSCM is based in Hudson, Michigan, but its work serves and benefits all Michiganders, and the tens of thousands of people who rely on waters flowing from Michigan to Lake Erie. ECCSCM’s work protects water and air that are essential to life. ECCSCM has conducted water sampling and water monitoring in the south central Michigan region almost 15 years. ECCSCM develops project areas, and tests local rivers, creeks, lakes, and drains for pollution from CAFOs. ECCSCM has tested local waterways for pollutants such as E. Coli, dissolved oxygen, phosphorus, nitrate, nitrite, and ammonia. Some of ECCSCM’s recent project areas include the Hazen Creek / South Branch River Raisin, Bean

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Creek Watershed, certain at-risk streams such as the Lime Lake Inlet and the Medina Drain in the Bean / Tiffin Watershed, and the Wolf Creek Watershed. ECCSCM's work benefits the community whose drinking water and fishing and recreational uses of the area are at risk from CAFO pollution by letting the community know of contaminated waters. ECCSCM also forwards much of their sampling and monitoring data on to the Michigan Department of Environmental Quality and the EPA, so that the federal and state agencies authorized with CAFO inspection, investigation, and enforcement authority, and with CAFO program and permitting oversight in the region can be apprised of local discharges, and take action. ECCSCM's activities and this FOIA request thus concerns "the operations or activities of the government." 40 C.F.R. § 2.107(l)(2)(i). ECCSCM's work is essential in tracing and tracking pollution that contributes to the poor water quality in the region, in addition to the notable toxic algae blooms in Lake Erie in 2011 and 2014, and pollution that contributes to the shutdown of city-wide water systems such as Toledo, Ohio's crisis in summer 2014. ECCSCM's request is targeted to obtain information that is likely to contribute to the understanding to an increased public understanding of EPA's operations or activities with respect to the investigation of CAFOs in the south central Michigan area. 40 C.F.R. § 2.107(l)(2)(ii).

ECCSCM has a long history of making targeted federal and state FOIA requests and using the information to benefit the public good. ECCSCM's volunteers and board members have decades of experience in reading CAFO permits and comprehensive nutrient management plans, speaking with EPA and Michigan DEQ staff about how CAFOs are or are not implementing permit requirements, and submitting comments to agencies regarding CAFO permitting. ECCSCM volunteers and board members are also contact persons for the local community, DEQ and EPA's "eyes on the ground", when a CAFO is doing an activity that is prohibited by a permit. ECCSCM also helps coordinate local residents to file complaints against local CAFOs with EPA and DEQ, enabling these agencies to acquire additional necessary information to perform their enforcement duties. ECCSCM's request is targeted to identify how the information it provides to federal and state agencies is being used in enforcement. 40 C.F.R. § 2.107(l)(2)(iv). ECCSCM is ably equipped to review the requested information and then disseminate to the larger public through its well-known website, [www.nocafos.org](http://www.nocafos.org), and its unique reporting programs such as "Stench Alerts". ECCSCM's website contains a litany of violations, including photos of the violations as they happen, for the public to learn and understand the extent of public health and environmental problems CAFOs can contribute to in the region. ECCSCM also disseminates information to the larger public through outreach, conferences, and agency advocacy. ECCSCM volunteers and board members regularly give presentations to communities, to local schools, participate as panelists at conferences, and escort interested groups (including policy makers and citizens) on "Tours de Manure" so that people can see and smell first-hand the difficulties industrial animal agriculture is having on the local community, waters, and air. ECCSCM's co-founder and board member, Lynn Henning, was a 2010 winner of the Goldman Environmental Prize for her CAFO work, and has been featured in films such as "Last Call at the Oasis", and she has appeared on national television shows such as HBO's "Real Time" hosted by Bill Maher. Ms. Henning's work has also been recognized by a

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nationally circulated publication, *Oprah Magazine* (<http://www.oprah.com/world/Health-Risks-That-Large-Factory-Farming-Leaves-Behind>). Ms. Henning has used her prestigious award to further support ECCSCM's mission and to support the group's water sampling and monitoring program.

Ms. Henning's national exposure has enabled ECCSCM to use reach even more members of the public, to educate them on the issue of CAFOs that exist not only in south central Michigan, but the Midwest region and throughout the entire United States. ECCSCM also has organized film viewings and informational panel discussions on CAFOs. ECCSCM also regularly works with and provides information procured via FOIA and state public disclosure requests to local organizations and decision-makers thereby assisting policy making, has supported public comments in response to state and national regulatory issues, and has supported petitions for rulemaking at the federal level. Specific information about EPA Region 5's CAFO inspection, enforcement, and investigation work on CAFOs in the South Central Michigan region is not within the public domain. ECCSCM has no financial interest in the requested information and will not use the information for financial gain.

The Socially Responsible Agriculture Project (SRAP) is a 501(c)(3) non-profit organization. SRAP is one of the very few, if not only, national organizations working to stop factory farms and their resulting harms from the community level. As such, SRAP possesses the ability to disseminate the requested information to the general public in Michigan, in the Midwest Region, and throughout the United States. EPA Region 5 administers, oversees, and has enforcement authority over Michigan's CAFO program. As such, EPA Region 5 is involved with overseeing lawful operation of CAFOs in the south central Michigan area, and these CAFOs' effects on the local environment, surrounding communities, public health, as well as the environment and natural resources. Information about Federal government involvement with inspections of CAFOs in this region is precisely the type of information that SRAP is well positioned to analyze and disseminate to their members and the general public.

Specific information about EPA Region 5's CAFO inspections is not within the public domain. Such information will allow SRAP to better understand the extent of Federal government's involvement with CAFOs and whether or not south central Michigan's CAFOs comply with relevant laws. After obtaining and analyzing the information provided, SRAP will use its knowledge and expertise to inform and educate the Michigan public, and the public throughout the U.S., regarding the EPA's inspections of CAFOs in the region.

SRAP intends to disseminate information gleaned from the disclosed documents to its members and the general public through a vast array of diverse and highly effective channels, including: SRAP's newsletter and website; press releases; presentations at conferences; letters and emails to SRAP supporters, as well as through social media such as SRAP's Facebook and Twitter accounts. With the analytical input from SRAP, and the on-the-ground knowledge of ECCSCM, the requested documents will significantly enhance the public's understanding of the EPA's inspection activities, and any attendant issues

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concerning effects on neighboring communities, natural resources, and water and air quality, among others.

SRAP's consistent contribution to public understanding of federal agency activities that affect the environment, as compared to the level of public understanding prior to disclosure, is well established. In determining whether the disclosure of requested information will contribute significantly to public understanding, a guiding test is "whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject." *Carney v. U.S. Dept. of Justice*, 19 F.3d 807, 815 (2d Cir. 1994). SRAP is comprised of professionals with agricultural economic, community organizing, scientific, technical, and legal expertise who regularly write, speak, teach, and advocate on issues related to the devastating effects of CAFOs, particularly to the communities surrounding these facilities. Thus, SRAP is uniquely qualified to disseminate the information to a large cross-section of the general population, allowing for disclosure to contribute to public understanding. Given SRAP's expertise and ability to contribute to public understanding through various channels, SRAP will contribute significantly to public understanding of the EPA's inspections of CAFOs in the South Central Michigan region. SRAP has no financial interest in the requested information.

### **CONCLUSION**

Since none of the statutory exceptions from the FOIA's mandatory disclosure provisions apply, access to the requested records should be granted within twenty (20) working days from the date of your receipt of this request. If this request is denied in whole or in part, I ask that you justify the denial with reference to specific exemptions in the Act and that you release any material that can be segregated or otherwise exempt material. I further request that you describe the deleted material in detail. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination and in formulating arguments in the event an appeal is taken.

I thank you in advance for your prompt reply. Please do not hesitate to contact me should you have any questions, concerns or comments regarding this request. You may direct all communications and responses relating to this request directly to me.

Sincerely,

/s/ Elisabeth A. Holmes

Elisabeth A. Holmes

*Counsel for Environmentally Concerned Citizens of South Central  
Michigan and the Socially Responsible Agriculture Project*

Enclosures (Michigan and Ohio Watershed Maps)  
cc: Cheryl Burdett, EPA Region 5 Water Enforcement